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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,901	10/02/2003	David Tye	021878.0005US1	2357

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ROBERT D. FISH  
RUTAN & TUCKER LLP  
611 ANTON BLVD 14TH FLOOR  
COSTA MESA, CA 92626-1931

EXAMINER

OKEZIE, ESTHER O

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/678,901	<b>Applicant(s)</b> TYE, DAVID	
	<b>Examiner</b> Esther O. Okezie	<b>Art Unit</b> 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 7-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 7-10 is/are rejected.
- 7) ☐ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

The amendment filed on 11/10/2005 and the remarks presented therewith have been carefully considered. Applicant's arguments with respect to claims 1,2, and 7-11 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson.
2. Re claim 9, Anderson discloses a method of comprising providing a bottle (1) having a neck with a circular cross section; providing a support frame (3) coupled to a biased gripping member (6) and a stationary gripping member (4); wherein the biased gripping member is biased toward the stationary gripping member and forms an opening (see opening at bottle phantom lines in figure 6) between the stationary gripping member and the biased gripping member; pushing the bottle through the

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opening such that the neck of the bottle pushes the biased gripping member away from the stationary gripping member(fig 2); and gripping the bottle at four distinct points (4,4,7,7; col. 2, lines 16-21) along the circumference of the neck.

3. Re claim 10, the steps of gripping the bottle further comprises using the bottle to apply pressure to the biased gripping member (fig 2; col. 2, lines 40-55).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1,7,8 rejected under 35 U.S.C. 103(a) as being unpatentable over Erickson.

2. Re claim 1, Erickson discloses a hook capable of gripping the crown neck of a bottle during cleaning, capping, and filling, comprising:

a stationary gripping member (upper claws 2 and 10);

a support body (7) coupled to the first stationary gripping member;

a biased gripping member (independent claws 5) that is biased toward the stationary gripping member by at least one spring (4) and is adapted to move away from the stationary gripping member as a result of pressure from the object being gripped (column 1, lines 40-52);

an opening (see area between claws where the board in phantom lines lies) formed between the first biased member and the first stationary gripping member capable of receiving a crown neck of a bottle to apply pressure; and

wherein the device is adapted to contact the object being gripped at four distinct points comprising less than twenty five percent of the total perimeter of the object (fig 1).

The recitations regarding gripping a particular item (a bottle) in the claims are insufficient to patentably distinguish the claimed apparatus from the prior art, because they relate only to the environment where the apparatus is used, but do not further describe or limit its structure. Furthermore, according to the Specification, "While a "bottle" is referred to throughout, it should be recognized that other types of containers can be substituted for a bottle so long as they have the required properties required to force open the gripping members and to be held by the gripping members" (Specification: page 3, lines 11-16).

Erickson does not include a second stationary gripping member coupled to the support body and a second biased gripping member coupled to the support body. It would have been obvious to one of ordinary skill at the time of the invention to duplicate the gripping members in order to provide multiple hooks for hanging clothes or other apparel on the shelf shown. Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention to duplicate the gripping members, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. In *Re Harza*, 274.F.2d 669,671,124 USPQ 378,380 (CCPA 1960)

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3. Re claim 7, a guide (8) upon which the biased gripping member slides between gripped configuration and a released configuration (fig. 1).

4. Re claim 8, the stationary gripping member has a groove that cooperates to hold the object (claw-like termination; column 1, lines 47-48).

5. Claims 1,2,7,8 rejected under 35 U.S.C. 103(a) as being unpatentable over Dries.

6. Re claim 1, Dries discloses a pan lifter "...for lifting pans of various weights and sizes" that is capable of gripping the crown neck of a bottle during cleaning, capping, and filling, comprising:

a stationary gripping member (fixed jaw members 14);

a support body (13) coupled to the first stationary gripping member;

a biased gripping member (adjustable jaw member 16) that is biased toward the stationary gripping member by at least one spring (25) and is adapted to move away from the stationary gripping member as a result of pressure from the object being gripped;

an opening (see area between gripping members in figs 1 and 2) formed between the first biased member and the first stationary gripping member capable of receiving a crown neck of a bottle to apply pressure; and

wherein the device is adapted to contact the object being gripped at four distinct points (15,15,19,20) comprising less than twenty five percent of the total perimeter of the object (fig 1).

The recitations regarding gripping a particular item (a bottle) in the claims are insufficient to patentably distinguish the claimed apparatus from the prior art, because they relate only to the environment where the apparatus is used, but do not further describe or limit its structure. Furthermore, according to the Specification, "While a "bottle" is referred to throughout, it should be recognized that other types of containers can be substituted for a bottle so long as they have the required properties required to force open the gripping members and to be held by the gripping members" (Specification: page 3, lines 11-16).

Dries does not include a second stationary gripping member coupled to the support body and a second biased gripping member coupled to the support body. It would have been obvious to one of ordinary skill at the time of the invention to duplicate the gripping members in order to provide multiple pan lifters for picking up multiple pans in industrial cooking applications or restaurants. Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention to duplicate the gripping members, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *In Re Harza*, 274.F.2d 669,671,124 USPQ 378,380 (CCPA 1960)

1. Re claim 2, the object (in this case a pan) has a three hundred and sixty degree circumference and the distinct points comprise less than ninety degrees of the arc (fig. 2)
7. Re claim 7, a guide (guide bars 10 and 11) upon which the biased gripping member slides between gripped configuration and a released configuration (fig. 1).

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8. Re claim 8, the stationary gripping member has a groove that cooperates to hold the object (claw-like lugs 15,19,20; col. 2, lines 58-68).

9. Claims 1,2,7,8 rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson.

10. Re claim 1, Anderson discloses a bottle opener capable of gripping the crown neck of a bottle during cleaning, capping, and filling, comprising:

- a stationary gripping member (4);

- a support body (3) coupled to the first stationary gripping member;

- a biased gripping member (6) that is biased toward the stationary gripping member by at least one spring (the device is made of sheet metal that acts as "spring" metal when the lever 8 is pulled; col. 2, lines 25-31; col. 3, lines 47-52) and is adapted to move away from the stationary gripping member as a result of pressure from the object being gripped (fig 2);

- an opening (see opening at bottle phantom lines in figure 6) formed between the first biased member and the first stationary gripping member capable of receiving a crown neck of a bottle to apply pressure; and

- wherein the device is adapted to contact the object being gripped at four distinct points (4,4,7,7; col. 2, lines 16-21) comprising less than twenty five percent of the total perimeter of the object (fig 4).

Anderson does not include a second stationary gripping member coupled to the support body and a second biased gripping member coupled to the support body. It



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would have been obvious to one of ordinary skill at the time of the invention to duplicate the gripping members in order to provide multiple openers for opening multiple bottles packed in a shipping crate. Indeed, Anderson discloses the devices can be attached with a shipment atop bottles because the device does not interfere with the stacking of the bottle cases because of its compact size. Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention to duplicate the gripping members, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *In Re Harza*, 274.F.2d 669,671,124 USPQ 378,380 (CCPA 1960)

2. Re claim 2, the bottle has a three hundred and sixty degree circumference and the distinct points comprise less than ninety degrees of the arc (fig. 4)

11. Re claim 7, a guide (11) upon which the biased gripping member slides between gripped configuration and a released configuration (fig. 2).

12. Re claim 8, the stationary gripping member has a groove that cooperates to hold the object (bent projection 12 and slot 10).

### ***Allowable Subject Matter***

Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1,2, 7-11 have been considered but are moot in view of the new ground(s) of rejection as described above.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EOO 12/02/05



**EILEEN D. LILLIS**  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600